



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY VALLEY REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO MERCK SHARP & DOHME CORP. FOR MERCK SHARP & DOHME CORP.-ELKTON PLANT VPDES Permit No. VA0002178

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Merck Sharp & Dohme Corp., regarding the Merck Sharp & Dohme Corp.-Elkton Plant for the purpose of resolving certain violations of the State Water Control Law the applicable permit, and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. “Discharge” means discharge of a pollutant. 9 VAC 25-31-10
6. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. “DMR” means Discharge Monitoring Report.
8. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. “Facility” or “Plant” means the Merck Sharp & Dohme Corp.-Elkton Plant, located at 2778 S. East Side Hwy, Elkton, Virginia, which treats and discharges treated industrial wastewater of Merck.
10. “Merck” means Merck Sharp & Dohme Corp., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Merck is a “person” within the meaning of Va. Code § 62.1-44.3.
11. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
13. “Permit” means VPDES Permit No. VA0002178, which was issued under the State Water Control Law and the Regulation to Merck on January 1, 2017 and which expires on December 31, 2021.
14. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9
VAC 25-31-10.

15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "Va. Code" means the Code of Virginia (1950), as amended.
20. "VAC" means the Virginia Administrative Code.
21. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Merck owns and operates the Facility. The Permit allows Merck to discharge treated industrial wastewater, and industrial stormwater from the Facility to the South Fork of the Shenandoah River in compliance with the terms and conditions of the Permit.
2. The South Fork of the Shenandoah River is located in the Shenandoah River Subbasin, Potomac River Basin, and is listed as impaired in DEQ's 303(d) report for aquatic life (benthics).
3. Merck notified DEQ on June 19, 2018 that ethylene glycol had been released to the stormwater conveyance system and had subsequently discharged through Outfall 001.

Additionally, Merck notified DEQ on June 22, 2018 that 500 gallons of propylene glycol had been released to the storm water conveyance system and had subsequently discharged through Outfall 001. Written reports of the unauthorized discharges were submitted by Merck to DEQ on June 22, 2018 and June 26, 2018, respectively. Merck reported that 1,297 gallons of ethylene glycol was discharged between May 25, 2018 and June 18, 2018.

4. On August 2, 2018, DEQ issued NOV No. W2018-08-V-0001 to Merck for the discharges of ethylene glycol and propylene glycol from the Facility to state waters.
5. On August 17, 2018, DEQ staff met with Merck representatives. Merck described in detail the measures installed at the Facility to prevent future discharges of propylene glycol and ethylene glycol, which included a more robust, continuous monitoring of process lines prior to discharge.
6. On September 6, 2018, Merck submitted documentation with activities Merck completed at the Facility since June 2018. The activities included, interim sampling, additional monitoring, improved signage and labeling, updated mapping of storm sewer conveyances, and the securing of an auditor to review the Facility's infrastructure and provide upgrade recommendations.
7. On December 20, 2018, Merck notified DEQ of an unanticipated bypass of propylene glycol to the stormwater basins. On December 24, 2018, Merck submitted a 5-Day letter which stated that Merck redirected the stormwater basins to discharge to the Facility's wastewater treatment system, to prevent any further discharges. The total release for this event reported by Merck was 1.6 gallons.
8. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
9. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
10. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
11. The Department has issued no permits or certificates to Merck other than VPDES Permit No. VA0002178.
12. The South Fork of the Shenandoah River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
13. Based on the results of the August 17, 2018 meeting, and the documentation submitted on September 6, 2018 and December 20, 2018, the Board concludes that Merck has violated Va. Code 62.1-44.5 and 9 VAC 25-31-50 by discharging ethylene glycol and propylene

glycol from the Facility to state waters as described in paragraph C(3) through C(11), above.

14. Merck has submitted documentation that verifies that the violations as described above have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Merck and Merck agrees to:

Pay a civil charge of \$17,290 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Merck shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Merck shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Merck for good cause shown by Merck, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2018-08-V-0001 dated August 2, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Merck admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Merck consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Merck declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Merck to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Merck shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Merck shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Merck shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert

will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Merck. Nevertheless, Merck agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Merck has completed all of the requirements of the Order;
 - b. Merck petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Merck.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Merck from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Merck and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Merck certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Merck to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Merck.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Merck voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2019.

Amy T. Owners, Regional Director
Department of Environmental Quality

Merck Sharp & Dohme Corp. voluntarily agrees to the issuance of this Order.

Date: 24 Jun 2019 By: Jonathan Gass, Plant Manager
(Person) (Title)
Merck Sharp & Dohme Corp.

Commonwealth of Virginia
City/County of Rockingham

The foregoing document was signed and acknowledged before me this 24th day of
June, 2019 by Jonathan Gass who is
Plant Manager of Merck Sharp & Dohme Corp. on behalf of the
corporation.

Guia B. Neese #7131432

Notary Public

7131432

Registration No.

My commission expires: FEB 29 2020

Notary seal:

